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THE PEOPLE'S REPUBLIC OF CHINA: A BIBLIOGRAPHY OF SELECTED ENGLISH-LANGUAGE LEGAL MATERIALS

Jeanette L. Pinard

1985 edition

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PREFACE

The number of materials available in English on mainland Chinese law has increased dramatically since 1980. Yet few bibliographies on Chinese law are currently available. This bibliography, it is hoped, will provide a generally comprehensive list of Chinese legal materials available in English published over the past fifteen years. Materials published up until January 1985 have been included.

The bibliography has been divided into twenty-six topical areas with each area subdivided into sections listing books and articles separately. Because the Chinese legal classification scheme has not been fully articulated, materials that do not easily fit into one of the specific topical categories are listed under "General Law." For example, adminstrative law materials (hsing-cheng fa) are listed under "General Law" because of the difficulty in determining precisely what administrative law is under the Chinese classification scheme. All materials have been cross-referenced where appropriate. The scope of the bibliography has been expanded by the addition of a section on other bibliographies available on Chinese law.

The first edition of this bibliography was published in 1983, and, at that time, articles published by the Foreign Broadcast Information Service (FBIS) and the Joint Publication Research Service (JPRS) were not generally included. FBIS and JPRS are U.S. government translation services; the former publishes the Daily Report: China, and the latter produces China Report: Political, Sociological and Military Affairs. Materials on law have appeared with increasing frequency in these publications since that time. As a result, the revised edition of this bibliography has included many of these materials published since 1983. In particular, the bibliography includes most of the articles published in JPRS during this period. Many of these articles are translations from Chinese law reviews, so it was thought necessary to include them for the researcher. More complete indices to the materials published in these two serials are readily available in most major public and university libraries.

In the past two years, more than ten compendiums of Chinese laws have been published. Since at least one, if not more, of the compendiums include most of the texts listed in the section on texts of Chinese laws, that section has not been thoroughly updated. A useful new subsection, however, has been added to the section on texts. JPRS has recently begun publication of the only translation of the State Council Gazette. FBIS is publishing a translation of the index to this gazette. Both sets of translations have been added to the section on Translations of Legal Texts.

Sources used to compile this bibliography include: the Public Affairs Information Service, New York; the Social Sciences Index, New York; the Humanities Index, New York; the Current Law Index, Menlo Park, California; the Legal Resources Index, Los Altos, California; and the Index to Foreign Legal Periodicals, London. Other sources include the bibliographic services available in the Library of Congress. Library of Congress call numbers are listed for the material available in the Library of Congress. The non-legal newspapers included in this bibliography are not listed with call numbers. The Christian Science Monitor, the Hong Kong Standard, The New York Times, The Wall Street Journal, and The Washington Post are all available by title in the Newspaper and Periodical Reading Room. Only a very few items are not in the Library of Congress collection, and these items are marked by "Not in LC" appearing in place of a call number. All of the pertinent English language holdings of the Far Eastern Law Division have been included in this bibliography.

INTRODUCTION

Enhancement of the Chinese legal system is a major component of the post-Mao modernization effort. Steps are now being taken to strengthen and restructure the legal system after it had been largely dismantled during the Cultural Revolution (1966-1976). The development of China's socialist legal system was given high priority at the Third Plenary Session of the 11th Central Committee of the Chinese Communist Party (CCP) held in December 1978. 1/ Within a year of this session, the first of several important laws was promulgated. 2/ As the Chinese have adopted new and revised laws and regulations in an increasing number of areas, once scarce materials on communist Chinese law have proliferated.

Economic laws are at the forefront of this legislative expansion. The rapid increase in foreign contacts and international trade has encouraged the Chinese to enact more commercial laws and regulations. The Chinese leadership hopes to harness the benefits of international trade for its modernization program. By implementing more laws, the Chinese leadership also seeks to calm Western fears of political and social instability. Since 1979, the Chinese have enacted more than three hundred new laws and regulations of which 250 pertain to economics. An additional 140 economic laws and

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1/ "Communique of the Third Plenary Session of the Eleventh Central Committee of the Communist Party of China," 21:52 Beijing Review 14 (December 1978).

2/ Chang Yu-yu and Wang Shu-wen, eds., Fa Hsueh Chi Pen Chih Shih Chiang Hua 141 (Peking, Kuo Ch'ing Nien Ch'u Pan She, 1980).

regulations were anticipated in 1982. [3] More recently, the State Council has announced that 22 important economic laws were issued in 1984. [4] The National People's Congress will vote on 17 economic laws and plans to draft 65 new laws and regulations during 1985. [5] Translated texts of many of these economic laws and regulations are now available in one of several new compendiums of Chinese laws. The original texts have typically been published in the Chung Hua Jen Min Kung Ho Kuo Kuo Wu Yuan Kung Pao [The State Council Gazette of the People's Republic of China]. The most complete set of English translations can be found in the loose-leaf Collection of Laws and Regulations of China Concerning Foreign Economic and Trade Relations, China Market Publishing Corporation, ed, Hong Kong, China Market Publishing Corp. and David Syme and Company, Australia, 1983.

The rapid development of Chinese law since the end of the Cultural Revolution has inspired a surge of interest among Western businessmen, lawyers, and legal scholars. As an introduction to this bibliography, a brief review of the Chinese legislative process is appropriate in order to draw attention to the many different types of laws examined in the English language materials.

As in other legal systems, the Chinese system has a variety of legal instruments with different designations and levels of importance in the overall hierarchy of laws. Translations of legal terms from Chinese to

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[3] The People's Daily (Peking), August 24, 1982, p. 3.

[4] FBIS, Daily Report: China, January 9, 1985, no. 004, p. K-30.

[5] FBIS, Daily Report: China, January 24, 1985, no. 017, p. K-18.

English have been imprecise. The term "law" is frequently used to translate a number of legal terms, when actually the term "regulation," "resolution," "order," "decree," or "decision" might be more appropriate in a given context. Although even the Chinese themselves are not always consistent in their usage, a researcher in Chinese law should keep in mind the need to distinguish these different legal terms.

In the three sections that follow, the first outlines the procedure for adopting legislation in the People's Republic of China (PRC). The next section provides a description of the major categories of Chinese law. The final section enumerates legal terminology in common use in the PRC and provides descriptions of the most frequently used terms. These descriptions attempt to illustrate the position each term holds within the general hierarchy of Chinese laws and regulations.

A. THE LEGISLATIVE PROCESS

The Constitution is the fundamental law to which all other laws must theoretically conform. 6/ However, many laws remain in effect even though they violate the Constitution. 7/ In practice, Chinese laws conform

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6/ Chang Hsin, "Enforcement of Policies and Enforcement of Laws," translated in FBIS, Daily Report: People's Republic of China, November 14, 1979, no. 221, p. L-2.

7/ "There is a formal procedure for superceding the Constitution," China Report: Political, Sociological and Military Affairs, no. 358, 33 (November 8, 1982). "It is ... permissible for the National People's Congress to make a decision to temporarily suspend the application of certain provisions in the Constitution by invoking the principle of 'new statutes superceding previous ones.'" Supra note 4, at L2-4.

to party policy which serves as the basis for all legislation in the PRC. [8] As in many communist regimes, it is sometimes difficult to distinguish between party policy and law. In the past, party policy has often been substituted for law, [9] but this practice is no longer unquestionably accepted. [10] While party policy remains an integral part of the law and is often labeled the "soul" of law, [11] party policy currently can be substituted for law only in the absence of applicable legislation. [12] A law is usually distinguished from a party policy by state organ enactment. [13]

There appear to be several basic steps in the adoption of major legislation in the PRC. Not enough is known about the enactment of minor legislation by lower level state organs to determine whether the same process applies. Initially, the CCP issues a directive outlining the need for legislation in a particular area of law. [14] Following the call for legislation, the Chairman of the Legislative Affairs Commission of the National People's Congress (NPC) appoints a special committee (hsiao tzu) to draft the specific piece of legislation. [15] This special committee is directly under the authority of the NPC or its Standing Committee. Law professors and other legal experts are often invited by the special committee to join in the work of drafting legislation. The committee then prepares a draft which is first submitted to the party for approval. Party participation in the drafting process ensures that new legislation conforms to party policy and ideology. The draft is then circulated among various interested government departments, mass organizations, and other institutions for their suggested revisions. In the case of the Constitution promulgated in December 1982, the draft was circulated throughout the entire country for six months to solicit comments and evaluations.

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[8] Ch'en Ch'un-lung and Hsia Hsien-fu, eds., Fa Hsueh T'ung Lun 44-45 (Chi Lin, Jen Min Ch'u Pan She, 1981).

[9] A. P. Blaustein, ed., Fundamental Legal Documents of Communist China xv (1962).

[10] Supra note 6, at 44-45.

[11] Liu T'ien-yu, "T'an 'Yi Fa Ts'ung Chung Ts'ung K'uai' yu Tso Ch'ing Ts'o Wu te Chieh Hsien," 4 Fa Hsueh Yueh K'an 24 (April 1982).

[12] Supra note 6, at 44-45.

[13] Id.

[14] F. H. Foster, "Codification in Post-Mao China," 30 Am. J. Comp. L. 400 (1982).

Based on these suggestions, the draft is revised and then reexamined by both the party and those departments directly concerned with the law. This process of revision and examination may be repeated several times, which results in substantial changes to the draft. The special committee drafts a final version satisfactory to all concerned parties and submits the product to the CCP leadership for approval. The draft is then sent to the NPC or its Standing Committee for consideration. The final step is adoption and promulgation of the law by either the NPC or its Standing Committee.

Amendments to laws can be made directly by either the NPC or its Standing Committee. [16] The NPC is currently considering draft resolutions governing the revision of organic laws of the local people's congresses and governments, as well as the revision of the electoral laws of the NPC and the local people's congresses. [17] The adoption of these resolutions will provide further insight into the amendment process. The NPC can alter or annul inappropriate decisions taken by its Standing Committee. [18] In turn, the Standing Committee of the NPC can annul those administrative rules, regulations, decisions, and orders of the State Council which purportedly contravene the Constitution or existing statutes. [19]

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[15] Id.

[16] Constitution of the People's Republic of China [1982], Art. 67.

B. CATEGORIES OF LAW

There are two major categories of law in the PRC. The first is *ch'eng wen fa* (written law); the second is *pu ch'eng wen fa* (literally "unwritten law," but also known as customary or common law). "Written law has passed through the normal legislative process and has been promulgated by the appropriate authority." [20] "Unwritten law" is not promulgated by legislative authority, but is nevertheless a law recognized by the country for its possible legal effect as a customary or common law, as a judicial precedent, or, on occasion, as party policy. [21] If there is a conflict between "written law" and "unwritten law," the former will normally have precedence over the latter. [22] The process for resolving possible conflicts between the two is handled by the judicial committee associated with each court. The members of the judicial committee are appointed by the people's congress that corresponds to the level of the court. 23/ The committee decides politically sensitive or legally difficult cases in which questions of policy or ideology, or of conflicts between laws, must be resolved.

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[17] FBIS, *Daily Report: China*, December 9, 1982, no. 237, p. K-1.

[18] Constitution [1982], Art. 62.

[19] *Id.*, Art. 67.

[20] Ch'en Ch'un-lung, *et al.*, *eds.*, *Fa Lu Chih Shih Wen Ta* 9 (Peking, Peiching Ch'u Pan She, 1979).

[21] *Id.* *See also* *supra* note 6, at 25.

[22] *Supra* note 4.

Chinese jurists usually divide domestic laws into eight categories based on subject matter. 24/ These categories are: 1) Constitutional Law, 2) Criminal Law, 3) Civil Law, 4) Marriage Law, 5) Administrative Law, 6) Labor Law, 7) Civil Procedure Law, and 8) Criminal Procedure Law. A civil code has not yet been promulgated. As has been the case with the Marriage Law, economic law will probably not be included in the Civil Code. 25/ In order to give these laws more prominence, the Marriage Law and the forthcoming economic law will stand as separate statutes.

C. LEGAL TERMINOLOGY

Some of the many terms used to denote law in the PRC include fa (laws), fa ling (decrees), chueh ting (decisions), chueh yi (resolutions), t'iao li (regulations), kuei ting (provisions), kuei tse (rules), pan fa (measures), chang ch'eng (articles of association), fang chen (policies), chih ling (orders), and an li (judicial precedents.)

23/ Organic Law of the People's Courts of the PRC, Art. 11.

24/ *Supra* note 6, at 27.

25/ This information was confirmed by Professor Chang Chin-fan of the Department of Law, People's University of Peking, during his visit to the Library of Congress in 1983.

The term used in the title of a law or regulation may indicate the level of the state organ that enacted the law. For example, major laws (fa) can be enacted only by the NPC or its Standing Committee, while less important t'iao li, kuei ting, kuei tse or pan fa can be issued by various governmental entities, usually the State Council or its ministries. A law or regulation enacted by the NPC or its Standing Committee is generally more important than one issued by other state organs.

Laws appear to be hierarchically organized into three different groups. Fa (laws), fa ling (decrees), and fa kuei (rules and regulations) are all broad terms for law. While in the past fa ling and fa kuei have been used almost interchangeably, several references in Chinese publications give precedence to fa ling over fa kuei. 26/ Fa is a term reserved for major laws of national scope. Fa ling refers to the enactments of the NPC or its Standing Committee, and fa kuei refers to the enactments of the State Council and its ministries. 27/

26/ Fa ling are described in several Chinese legal publications as those laws and regulations enacted by the Standing Committee of the NPC; see supra note 18, at 10 and Fa Hsueh T'se Tian 454 (Shanghai, Shanghai Shih Shu Ch'u Pan She, 1979). Fa kuei are described as administrative laws enacted by the State Council in accordance with the Constitution, laws (fa lu), and decrees (fa ling); see supra note 6, at 138. The State Council is required to help implement the laws (fa lu) and decrees (fa ling) of the Standing Committee; see supra note 6, at 134.

In the Chinese text of the Constitution [1982], the administrative rules and regulations of the State Council are referred to as fa kuei in Article 67, paragraph 7 and Article 89, paragraph 1. Laws (fa lu) and decrees (fa ling) have higher status than orders (ming ling, a type of fa kuei). For a fuller explanation, see P'an Nien-chih, ed., Fa Hsueh Tsung Lun 21 (Shanghai, Chih Shih Ch'u Pan She, 1981).

27/ Under Article 5 of the "Provisional Regulations on Handling Official Documents of the State Administrative Organs," promulgated by the State Council on February 27, 1981, important laws and regulations issued by the State Council are referred to as fa kuei. For a further description of

Some of the types of laws listed above may be described as follows:

1. _Fa_ (laws or statutes) is both a general and specific term for law. As a specific term, _fa_ are major laws enacted by the NPC or its Standing Committee. _Fa_ are used to regulate the most important political, economic, and social aspects of Chinese life. _Fa_ have paramount legal authority. Since 1979, the NPC and its Standing Committee have enacted a growing number of these major laws including the "Law of Criminal Procedure," the "Criminal Law," and the "Law on Joint Ventures Involving Chinese and Foreign Investment."

2. _Fa ling_ (decrees) is another term generally used to denote law. It indicates a category of law which is second in order of priority behind _fa_. _Fa ling_ is comprised of _chueh ting_ (decisions), _chih shih_ (directives), and _ming ling_ (orders). 28/ _Fa ling_ gain added importance because they are usually enacted by the NPC or its Standing Committee. 29/ In the PRC, laws are ultimately interpreted by the NPC Standing Committee rather than by the courts. 30/ _Fa ling_ often influence the interpretation of laws and assume

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official documents and the terminology used, the reader should examine the text of this law found in 5 _Chung Hua Jen Min Kung Ho Kuo Wu Yuan Kung Bao_ 153 (1981).

28/ _Supra_ note 18, at 10.

29/ _Id_.

30/ Constitution [1982], Art. 67.

greater significance for this reason. For example, the "Resolution on Strengthening the Interpretation of Law" is an important resolution which affects the interpretation of all laws. 31/

3. T'iao li (regulations) are issued by the NPC, by its Standing Committee or, most frequently, by the State Council. As the executive branch of the Chinese government, the State Council can issue regulations within its jurisdiction as authorized by the NPC or its Standing Committee. 32/ The most important t'iao li are enacted by the NPC Standing Committee. The "Regulations on Arrest and Detention" and the "Regulations of the PRC on Special Economic Zones in Guangdong Province" are two examples of t'iao li enacted by the NPC Standing Committee.

31/ The NPC and its Standing Committee have final authority over the interpretation of laws. The "Resolution on Strengthening the Interpretation of Law" adopted on June 10, 1981, at the 19th meeting of the 5th NPC Standing Committee states:

> 1. All articles in laws and decrees requiring further definition as to limits or supplementary stipulations shall be interpreted or stipulated by the NPC Standing Committee.
> 2. All questions arising from court trials concerning the specific application of laws and decrees shall be interpreted by the Supreme People's Court. All questions relating to the specific application of laws and decrees in the procuratorial work of the procuratorates shall be interpreted by the Supreme People's Procuratorate. In case there is a difference in principle between the interpretations of the Supreme People's Court and the Supreme People's Procuratorate, the NPC Standing Committee shall be asked to give an interpretation or decision.
> 3. All questions on the specific application of other laws and decrees that do not come under judicial or procuratorial work shall be interpreted by the State Council and responsible departments.

[Source: FBIS, Daily Report: China, June 11, 1981, no. 112, p. K-3].

32/ Constitution [1982], Art. 89.

4. Chang ch'eng (articles of association) have the force of law if issued by a state organ. [33] Articles of association issued, for example, by agricultural producers' cooperatives, scientific or academic organizations, or state banks are legally binding. [34] The "Provisional Articles of Association Governing the National Academy of Sciences" constitutes a specific example of chang ch'eng. The Constitution of the Chinese Communist Party (Chung Kuo Kung Ch'an Tang Chang Ch'eng) is another important set of chang ch'eng. [35] While the party constitution does not theoretically have the force of a law affecting the general public, it is nonetheless binding on party members. Members violating the party constitution may be subject to stringent disciplinary measures.

Case law does not have binding legal effect in China, generally speaking. An li (judicial precedents) are sometimes used in courts to assist judges in deciding cases. [36] The undeveloped state of Chinese law in many legal areas leads the courts to utilize model cases as a guide in reaching decisions in cases similar to the model case. [37] Only when a prior case is used to decide other similar cases in court do judicial precedents have any legal application. [38] The Ministry of Justice is currently compiling books of judicial decisions for the general guidance of courts and for use by legal scholars.

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[33] Supra note 18, at 10.

[34] Id.

[35] While chang ch'eng is translated as "articles of association," the Chung Kuo Kung Ch'an Tang Chang Ch'eng has been translated by Xinhua, the official Chinese press agency, as the "Constitution of the CCP." See FBIS, Daily Report: China, September 9, 1982, no. 175, p. K-1.

[36] Supra note 6, at 25; see also Liu Yen-shou, ed., Fa Chih Wen T'i Chieh Ta 26-27 (Lan-chou, Kansu Jen Min Ch'u Pan She, 1981).

[37] Id.

These examples are only a few of the many legal terms used in the PRC to denote laws and regulations. The Chinese remain relatively imprecise in their use of legal terms. The addition of qualifiers such as "provisional," "temporary," and "for trial implementation" may further confuse a researcher's understanding of the scope and authority of many Chinese laws. The type of law and the level of the state organ responsible for enacting the law both affect the hierarchical importance of laws in the PRC. [39]

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[38] Li Fang and Chang Che, eds., Fa Hsueh Yuan Li (Shen Yang, Liao-ning Jen Min Ch'u Pan She, 1981).

[39] *Supra* note 4, at L-2.

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